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November 9, 2001

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OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Joint Petition of Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc., and the Consumer Advocate Division of the Office of the Attorney General for the Approval and Implementation of Earnings Review Settlement.*
Docket No. 99-00995

Dear Mr. Waddell:

Enclosed please find the original and thirteen (13) copies of the Final Brief of Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc. on the Merits for filing in the above-referenced docket. I have also enclosed an additional copy of the Final Brief, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions with respect to this matter, please do not hesitate to contact me.

Best regards.

Very truly yours,



R. Dale Grimes

RDG/gci
Enclosures

cc: Jack W. Robinson, Jr., Esq. (via hand delivery, w/ enclosure)
Timothy C. Phillips, Esq. (via hand delivery, w/ enclosure)
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Mr. Gregory Eubanks (w/ enclosure)
Mr. Thomas W. Ott (w/ enclosure)
Mr. Dwight S. Work (w/ enclosure)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

JOINT PETITION OF CROCKETT
TELEPHONE COMPANY, INC., PEOPLES
TELEPHONE COMPANY, WEST
TENNESSEE TELEPHONE COMPANY, INC.,
AND THE CONSUMER ADVOCATE
DIVISION OF THE OFFICE OF THE
ATTORNEY GENERAL FOR THE
APPROVAL AND IMPLEMENTATION OF
EARNINGS REVIEW SETTLEMENT

Docket No. 99-00995

**FINAL BRIEF OF CROCKETT TELEPHONE COMPANY, INC.,
PEOPLES TELEPHONE COMPANY, AND
WEST TENNESSEE TELEPHONE COMPANY, INC. ON THE MERITS**

Pursuant to the Notice of Filing of Briefs issued by the Tennessee Regulatory Authority on November 2, 2001, Crockett Telephone Company, Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc. (the "TEC Companies" or "TEC") hereby file their Final Brief on the Merits in this docket. As directed in that Notice, this Final Brief will address the issues set forth in the Pre-Hearing Officer's Order of August 24, 2001. Those issues are:

- (a) Whether the amount of overearnings identified in the Settlement Agreement for the TEC Companies for the years 1999 – 2001 is correct; and
- (b) How and to what extent the rate design described in the Settlement Agreement should be amended to adjust for the overearnings identified therein.

Order of Pre-Hearing Officer, at 17 (August 24, 2001).

I. STATEMENT OF THE CASE.

This docket was commenced on January 12, 2000, by the filing of a joint petition by the TEC Companies and the Consumer Advocate Division of the Office of the Attorney General,

seeking the approval and implementation of an earnings review settlement for the earnings period 1999 through 2001. The Settlement Agreement, which was attached to the Petition as Exhibit "A", had originally been filed with the Authority on December 30, 1999, pursuant to the direction of the Executive Secretary of the Authority in his letter of December 6, 1999.

Previously, by Order dated April 1, 1997, in Docket No. 96-00774, the Authority approved a settlement for the period 1996 through 1998, which had been entered into by the TEC Companies and the Consumer Advocate Division. The Settlement Agreement reduced earnings of the TEC Companies by \$4.95 million and set the fair rate of return at 11.474%. This agreement was approved by the Authority along with the manner in which the excess earnings would be disposed of and the rates proposed by the parties.

In May of 1998, the Consumer Advocate Division began an investigation of the TEC Companies' earnings for the period 1999 through 2001. In April of 1999, the Staff of the Tennessee Regulatory Authority issued a data request seeking various financial and operating data of the TEC Companies. That and subsequent data requests were answered by the TEC Companies and an on-premise audit visit was conducted by the Authority's Staff at TEC's headquarters. After the conclusion of the investigation, the TEC Companies and the Consumer Advocate Division reached the Settlement Agreement that is the subject of this docket. In so doing, the parties reviewed available information and made forecasts of earnings for each of the three TEC Companies for the years 1999 through 2001 on an individual basis. It was agreed that a fair rate of return on a combined basis should be 9.909%. The Forecast of Earnings for 1999 – 2001 as agreed upon was attached to the Petition as Exhibit "B".

The total amount of overearnings included in the proposed revenue adjustments in the Settlement Agreement is \$6,354,181. Of this amount, \$720,000 was included to offset the delay

in deployment of projected plant improvements in the 1996 – 1998 time period. These delayed plant improvements had been completed by the time the Petition in this docket was filed. As set forth in the Settlement Agreement, the proposed revenue adjustments and the amount of each adjustment for the three TEC Companies for the years 1999 – 2001, and on a total basis, is as follows:

TELEPHONE ELECTRONICS CORPORATION
PROPOSED REVENUE ADJUSTMENTS
1999-2001

	WEST TENNESSEE TELEPHONE COMPANY, <u>INC.</u>	PEOPLES TELEPHONE COMPANY	CROCKETT TELEPHONE COMPANY, <u>INC.</u>	<u>TOTALS</u>
PROPOSED ADJUSTMENTS-1999				
Increase in Depreciation Expense-1999	\$ 312,570.00	\$ 171,926.00	\$ 101,584.00	\$ 586,080.00
Dialing Parity Impact- 3 Months	<u>55,877.37</u>	<u>74,815.52</u>	<u>30,872.09</u>	<u>161,564.98</u>
TOTAL PROPOSED ADJUSTMENTS-1999	\$ <u>368,447.37</u>	\$ <u>246,741.52</u>	\$ <u>132,456.09</u>	\$ <u>747,644.98</u>
PROPOSED ADJUSTMENTS-2000				
Increase in Depreciation Expense-2000	\$ 430,439.00	\$ 281,511.00	\$ 179,337.00	\$ 891,287.00
Waive Non-Recurring Charges during Forecast Period	62,950.00	46,587.50	58,882.50	168,420.00
Dialing Parity Impact	223,509.46	299,262.09	123,488.36	646,259.91
Eliminate Intracompany Toll; Access	20,335.44	1,189.56	-	21,525.00
Increase Contiguous County Plan to 180 Minutes @ 50 Percent Discount During Forecast Period	35,260.05	55,440.00	50,569.20	141,269.25
Credit for Business Access Lines (\$5.00 per line)	55,354.32	59,119.92	60,814.44	175,288.68
Credit for Residence Access Lines (\$4.75per line)	<u>236,878.21</u>	<u>239,143.84</u>	<u>212,552.43</u>	<u>688,574.48</u>
TOTAL PROPOSED ADJUSTMENTS-2000	\$ <u>1,064,726.48</u>	\$ <u>982,253.91</u>	\$ <u>685,643.93</u>	\$ <u>2,732,624.32</u>

PROPOSED ADJUSTMENTS-2001

Increase in Depreciation Expense-2001	\$ 461,958.00	\$ 289,422.00	\$ 238,361.00	\$ 989,741.00
Waive Non-Recurring Charges during Forecast Period	65,845.70	51,628.27	61,885.51	179,359.48
Dialing Parity Impact	223,509.46	299,262.09	123,488.36	646,259.91
Eliminate Intracompany Toll; Access	20,335.44	1,189.56	-	21,525.00
Increase Contiguous County Plan to 180 Minutes @ 50 Percent Discount During Forecast Period	35,260.05	55,440.00	50,569.20	141,269.25
Credit for Business Access Lines (\$5.00 per line)	57,788.64	62,635.46	61,105.14	181,529.24
Credit for Residence Access Lines (\$4.75 per line)	<u>247,295.41</u>	<u>253,364.44</u>	<u>213,568.46</u>	<u>714,228.31</u>
TOTAL PROPOSED ADJUSTMENTS-2001	\$ <u>1,111,992.70</u>	\$ <u>1,012,941.82</u>	\$ <u>748,977.66</u>	\$ <u>2,873,912.19</u>
TOTAL PROPOSED ADJUSTMENTS-1999-2001	\$ <u>2,545,166.54</u>	\$ <u>2,241,937.26</u>	\$ <u>1,567,077.68</u>	\$ <u>6,354,181.48</u>

II. COURSE OF PROCEEDINGS.

The procedural course of this docket is set out in detail in the Pre-Hearing Officer's Order of August 24, 2001. The TEC Companies submit that it presents an accurate history and adopt it by reference. See Order of Pre-Hearing Officer, at 2-8 (August 24, 2001).

III. ISSUES PRESENTED FOR CONSIDERATION.

(a) Whether the amount of overearnings identified in the Settlement Agreement for the TEC companies for the years 1999 – 2001 is correct?

(b) How and to what extent the rate design described in the Settlement Agreement should be amended to adjust for the overearnings identified therein?

IV. REASONS SUPPORTING APPROVAL OF SETTLEMENT AGREEMENT.

A. The TRA Should Approve the Settlement Agreement As Modified, Because It is Fair, Just, and Reasonable, And in the Best Interests of the Customers Served by the TEC Companies.

The Settlement Agreement is clearly fair, just, and reasonable and in the best interests of the TEC Companies' local exchange customers. The amount of the overearnings and the adjustments resulting from the rate design provide many benefits for TEC's customers. For example, it provides 24 months of credits at the rate of \$5.00 per month per business access line and \$4.75 per month per residence access line. See Petition, Exhibit "A" (filed January 12, 2000). This alone results in excess of \$1.75 million in direct monthly credits to those customers. Moreover, the total amount of the TEC's overearnings and adjustments required by the Settlement Agreement is \$6.4 million, an amount that is "unprecedented." Direct Testimony of Robert T. Buckner, at 4, lines 1 – 4 (September 7, 2001).

The Settlement Agreement was preceded by eighteen months of investigation by the Consumer Advocate and the Authority's staff, as well as negotiations between the TEC Companies and the Consumer Advocate Division. Id., at 4, lines 4 – 9. The Consumer Advocate Division, which is charged by law with representing consumers in the State of Tennessee, has given its full support to this Settlement Agreement. In fact, this docket was initiated by a joint petition to approve the Settlement Agreement filed by the TEC Companies and the Consumer Advocate Division.

The Settlement Agreement is patterned on previous settlement agreements entered into between the TEC Companies and the Consumer Advocate Division, all of which were approved by the Authority. Id., at 3, lines 4 – 22, through page 4, line 1. Most recently, the Authority approved the Settlement Agreement for the immediately preceding review period, 1996 – 1998,

in an Order entered April 1, 1997, in Docket No. 96-00774. Since those earlier settlement agreements received approval of the Authority, the pending agreements should receive approval as well.

Finally, no one has objected on the basis that this Settlement Agreement is not fair, just, and reasonable, and in the best interests of the TEC Companies' local exchange customers. Only AT&T Communications of the South Central States, Inc., has intervened in order to challenge access rates, which are not affected one way or the other by this Settlement Agreement. AT&T has raised no issue as to the calculation of the projected overearnings in this case. See Comments of AT&T Communications of the South Central States, Inc. as to Issues Proposed by TEC Companies and the Consumer Advocate Division, at 2 (June 14, 2000) ("AT&T does not raise this as an issue . . ."). AT&T's only contention is that the Settlement Agreement should not reduce the rates paid by local exchange customers; rather, AT&T submits that its access rates should be reduced.

AT&T bases its claim for reduced rates on its theory that access rates exceed costs. However, there is no evidence to support this claim because, as stated by TEC's witness: "the [TEC] Companies are average schedule companies and therefore do not have cost studies related to the access charge elements. So, from a practical standpoint, I do not know the cost associated with these elements." See Prepared Rebuttal Testimony of Dwight S. Work, at 2, line 15-17 (September 14, 2001). AT&T's witness, Richard T. Guepe, cites nothing to support his conclusory statements that these elements "have no cost to the TEC Companies." See Prefiled Direct Testimony of Richard T. Guepe, at 12, line 1-13 (September 7, 2001). Of course, as clearly established by Mr. Guepe's own testimony, the regulatory policy in the State of

Tennessee for many years has been to establish access charges on the basis of considerations other than costs. Id., at 8, line 15, through page 9, line 5.

Thus, as TEC and the Consumer Advocate have maintained throughout this docket, the issues raised by AT&T challenge established rate-setting policies in this State that have been applied across the board to all rate of return companies. Accordingly, these issues should be aired in a generic docket, such as In Re: Petition of AT&T Communications for the Convening of a Generic Contested Case for the Purpose of Access Charge Reform, Docket No. 97-00889. They should not be considered piecemeal in individual company earnings review proceedings.¹ Prepared Rebuttal Testimony of Dwight S. Work, at 1, lines 13 – 21, through 2, lines 1 – 7 (September 14, 2001).

B. The Amount of Overearnings Identified in the Settlement Agreement for the TEC Companies for the Years 1999 – 2001 is Correct.

As established in the Direct Testimony of Dwight S. Work, the amount of overearnings identified in the Settlement Agreement is “correct” in the sense that the amounts that were forecasted “fairly present the future results and are reasonable when taken as a whole in considering past performances.” See Prepared Direct Testimony of Dwight S. Work, at 3, lines 5 – 7 (September 7, 2001). Mr. Work further testified that the forecast that was used in the

¹ The TEC Companies’ Memorandum of Understanding with AT&T, Prefiled Direct Testimony of Richard T. Guepe, at Exhibit RTG-1 (September 7, 2001), is not to the contrary. As explained by TEC’s witness:

The Memorandum of Understanding was executed for the purposes of expediting the resolution of this case. It did not reflect a determination by the Tennessee Operating Companies as to the level of costs associated with access charge rate elements that the agreement proposed to adjust. Instead the overall access rates that would have been implemented under the agreement represented what the Tennessee Operating Companies believed to be a reasonable compromise of the issues raised by AT&T in this docket.

Prefiled Direct Testimony of Dwight S. Work, at 3, lines 1 – 7 (filed September 14, 2001). Moreover, the Memorandum of Understanding is no longer an issue in this docket. Order of Pre-Hearing Officer, at 15 (August 24, 2001).

Settlement Agreement was “the result of discussions between and among the parties involved which led to agreement as to the assumptions to be used in the agreed forecast. We believe that using those assumptions resulted in a reasonable estimate of anticipated rate base and operating results for the forecast period.” Id. at 3, lines 10-13.

In this case, however, not only is the Settlement Agreement supported by a fair and reasonable forecast, but because of the passage of time, the Authority and the parties have available the actual operating results for all but the last six (6) months of the three-year period under review. Mr. Work examined these results and found that for the 30-month period the overearnings were approximately \$300,000 less than forecasted. Id. at 3, lines 15-23. Mr. Work testified that such differences are not unusual. Id. at 4, lines 2-5. However, TEC is prepared to honor the original Settlement Agreement entered into in 1999 even though actual results indicate that the amount of the overearnings were to some extent overestimated.

The testimony filed on behalf of the Consumer Advocate and Protection Division supports the accuracy of the overearnings specified in the Settlement Agreement from another perspective. Robert T. Buckner testified as to the intensity of the investigation and negotiations that ultimately produced the Settlement Agreement, concluding that “the agreeing parties believe that the Settlement is just and reasonable and was based upon known and reasonably anticipated changes.” See Direct Testimony of Robert T. Buckner, at 4, lines 14-15 (September 7, 2001).

AT&T’s witness stated that for purposes of this testimony, “AT&T has accepted that amount [of overearnings] and offers no opinion at this time as to whether such amount is accurate or appropriate.” See Prefiled Direct Testimony of Richard T. Guepe, at 4, lines 8-11 (September 7, 2001). Subsequently, AT&T has not expressed any different view.

Accordingly, the Authority should be satisfied from all the testimony that the amount of overearnings identified in the Settlement Agreement for the TEC Companies for the years 1999 – 2001 is correct.

C. **The Rate Design Described in the Settlement Agreement Should be Amended Slightly to Allow for the Orderly Implementation of the Settlement Agreement.**

The second issue identified in the Pre-Hearing Officer's Order implies that an amendment to the rate design might be needed because of possible changes in the amount of the overearnings identified in the Settlement Agreement. However, since, as shown above, the amount of overearnings specified in the Settlement Agreement is acceptable as written, amendments to the rate design are not needed for that reason.

Amendments to the rate design are necessary because of the passage of time since the Settlement Agreement was reached. The rate design in the Settlement Agreement originally contemplated the implementation of depreciation expenses in each year of the 1999 – 2001 review period. It also provided for customer credits to be applied on a monthly basis in the years 2000 and 2001. Other adjustments were also to occur during the years 2000 and 2001. With the exception of dialing parity, which was implemented on September 22, 1999, none of the adjustments have been made because the Settlement Agreement has not been approved.² Accordingly, the TEC Companies proposed, in the Prepared Direct Testimony of Dwight S. Work, a methodology for implementing the rate design over the course of 24 months after an

² The contiguous county calling plan approved in Docket No. 96-00744 has remained in place throughout this period. Thus, TEC's customers continue to receive the benefit of 60 minutes of contiguous county calling at a 50% discount. The Settlement Agreement in this docket would increase this benefit to 180 minutes at 50% discount. This additional 120 minutes has not been implemented pending the Authority's approval.

Order from the Authority approving the Settlement Agreement. Prepared Direct Testimony of Dwight S. Work, at 4, lines 8 – 22 & Exhibit DSW-2 (September 7, 2001).

The Consumer Advocate's testimony proposed a different amended implementation schedule for the rate design in the Settlement Agreement. First, the Consumer Advocate recommended that the depreciation and amortization expenses for 1999 – 2001 can be resolved through appropriate accounting processes and require no change in implementation of the Settlement Agreement. Direct Testimony of Robert T. Buckner, at 5, lines 12 – 15 (September 7, 2001). Second, the Consumer Advocate recommended that the amounts due for the elimination of intracompany toll, for increasing minutes for the Contiguous County Calling Plan, and for waiver of non-recurring charges be implemented prospectively in the years 2002 and 2003. Id. at 5, lines 17-21. Third, the Consumer Advocate recommended that the total credits for residential and business customers that were scheduled for the year 2000 be applied to customers' bills no later than 30 days after the TRA's Order in this docket, and that monthly credits originally scheduled for 2001 be applied monthly in year 2002. Id. at 6, lines 1-9.

The TEC Companies do not object to the rate design implementation changes proposed by the Consumer Advocate. See Prepared Rebuttal Testimony of Dwight S. Work, at 1, lines 4-8 (September 14, 2001).³

³ The TEC Companies believe that the customer credits for the year 2000 can be made effective as of the customers' bills that have a closing date within 30 days after issuance of a written order. However, it may take a period of time to clear all the logistics necessary for the credit actually to appear on the bills. Because the size of the year 2000 credit may exceed a customer's total bill in the first month, TEC will carry forward any excess from month to month until the full credit has been applied.

V. CONCLUSION.

As established by the testimony, the joint petition, and the entire record in this docket, the Settlement Agreement between the TEC Companies and the Consumer Advocate is fair, just, reasonable, and in the best interests of the customers served by the TEC Companies. The amount of the overearnings originally forecasted is very close to the operating results achieved for the first 30 months of the review period and must be deemed "correct." Slight modifications in the implementation of the adjustments have been proposed by both the TEC Companies and the Consumer Advocate, and TEC is willing to accept the proposal of the Consumer Advocate. Accordingly, the Settlement Agreement should be approved by this Authority and a final order entered.

Respectfully submitted,



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*Attorneys for Crockett Telephone Company,
Inc., Peoples Telephone Company, and West
Tennessee Telephone Company, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Final Brief of Crockett Telephone Company, Inc., Peoples' Telephone Company, and West Tennessee Telephone Company, Inc. on the Merits has been served upon the following, via the method(s) indicated, this the 9th day of November, 2001:

- ☒ Hand
- ☐ Mail
- ☐ Federal Express

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